

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
ASCOT FUND LTD., GABRIEL CAPITAL
CORPORATION,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (SMB)

**DECLARATION OF LAN HOANG IN SUPPORT OF
TRUSTEE'S MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

I, Lan Hoang, declare the following:

1. I am a Partner with the law firm Baker Hostetler LLP, counsel to Irving H.

Picard, as trustee ("Trustee") for the substantively consolidated liquidation of the business of

Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.*, and the estate of Bernard L. Madoff (“Madoff”). I submit this declaration in support of the Trustee’s Memorandum of Law in Opposition to Defendants’ Motions for Summary Judgment filed by Defendants J. Ezra Merkin, Gabriel Capital Corporation, Ascot Partners, L.P., and Ascot Fund Ltd.

2. Attached hereto as Exhibit 1 is a copy of an excerpt from the deposition transcript of Bruce G. Dubinsky dated April 27, 2015.

3. Attached hereto as Exhibit 2 is a copy of the Form ADV Uniform Application for Investment Adviser Registration for Bernard L. Madoff Investment Securities dated August 25, 2006, Bates Numbered PUBLIC0003729.

4. Attached hereto as Exhibit 3 is a copy of the Form ADV Uniform Application for Investment Adviser Registration for Bernard L. Madoff Investment Securities dated January 24, 2007, Bates Numbered PUBLIC0003763.

5. Attached hereto as Exhibit 4 is a copy of an excerpt from the deposition transcript of Research Company A Principal dated November 21, 2012.

6. Attached hereto as Exhibit 5 is a copy of an excerpt from the deposition transcript of Fred Sloan dated October 16, 2012.

7. Attached hereto as Exhibit 6 is a copy of an excerpt from the deposition transcript of Robert Rosenkranz dated October 4, 2012.

8. Attached hereto as Exhibit 7 is a copy of an excerpt from the deposition transcript of John L. Steffens dated October 9, 2012.

9. Attached hereto as Exhibit 8 is a copy of an excerpt from the deposition transcript of Ezra Merkin dated February 24 -25, 2015.

10. Attached hereto as Exhibit 9 is a copy of the Prospectus of Ascot Fund Limited dated February 1996, Bates Numbered BS00306056.

11. Attached hereto as Exhibit 10 is a copy of the Confidential Offering Memorandum of Ascot Partners, L.P, dated February 1996, Bates Numbered GCCSAC00000109.

12. Attached hereto as Exhibit 11 is a copy of an excerpt from the deposition of Michael Autera dated October 19, 2011.

13. Attached hereto as Exhibit 12 is a copy of a letter from J. Ezra Merkin to an investor in Ascot Fund dated November 11, 2002, marked Trustee Exhibit 8, Bates Numbered GCC-NYAG 0031102.

14. Attached hereto as Exhibit 13 is a copy of an excerpt from the deposition of Michael Autera as designated Rule 30(b)(6) witness dated October 22-23, 2014.

15. Attached hereto as Exhibit 14 is a copy of an excerpt from the deposition of Matthew B. Greenblatt dated August 17, 2015.

16. Attached hereto as Exhibit 15 is a copy of the Stipulation and Order Appointing Receiver for Ascot Partners, L.P., *The People of the State of New York v. J. Ezra Merkin*, Index No. 450879/2009, Dkt. No. 36, dated June 25, 2009.

17. Attached hereto as Exhibit 16 is a copy of Exhibit 60, entitled “Madoff Investment History” from the Affirmation of Neil A. Steiner in the matter *The People of the*

State of New York v. J. Ezra Merkin, Index No. 450879/2009, Dkt. No. 196, dated December 6, 2010.

18. Attached hereto as Exhibit 17 is a copy of the Response of Defendants J. Ezra Merkin and Gabriel Capital Corporation to Plaintiff's Statement of Undisputed Material Facts, and Statement of Additional Facts in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendants' Cross-Motion for Summary Judgment in the matter *The People of the State of New York v. J. Ezra Merkin*, Index No. 450879/2009, Dkt. No. 195, dated December 6, 2010.

19. Attached hereto as Exhibit 18 is a copy of an Ascot Fund Limited Prospectus dated January 2003, Trustee Exhibit 336, Bates Numbered BS00020958.

20. Attached hereto as Exhibit 19 is a copy of Merkin's file on Madoff, Trustee Exhibit 363, Bates Numbered GCC-P 0393096-3606.

21. Attached hereto as Exhibit 20 is a transcription of selected telephone conversations, Trustee Exhibit 368, originally produced as bd.mp3 audio file.

22. Attached hereto as Exhibit 21 is a transcription of selected telephone conversations, Trustee Exhibit 369, originally produced as 1bf.mp3 audio file.

23. Attached hereto as Exhibit 22 is a copy of an email exchange between Ezra Merkin and Michael Autera on March 31, 2006, Trustee Exhibit 373, Bates Numbered BS00340382.

24. Attached hereto as Exhibit 23 is a copy of an excerpt from the arbitration testimony of Michael Autera in the matter *Benjamin J. Jesselson v. J. Ezra Merkin*, AAA

Arbitration No. 13 148 Y 01912 10/ *JJS Associates, L.P. v. J. Ezra Merkin*, AAA Arbitration No. 13 148 Y 012802 10, dated September 19, 2011.

25. Attached hereto as Exhibit 24 is a copy of an excerpt from the arbitration testimony of Ezra Merkin in the matter *Morry Weiss v. J. Ezra Merkin*, AAA Arbitration No. 13 148 Y 01803 10, dated August 10, 2011.

26. Attached hereto as Exhibit 25 is a copy of an excerpt from the deposition testimony of Michael J. Achillare dated August 9, 2011.

27. Attached hereto as Exhibit 26 is a copy of an excerpt from the arbitration testimony of Ezra Merkin in the matter *Benjamin J. Jesselson v. J. Ezra Merkin*, AAA Arbitration No. 13 148 Y 01912 10/ *JJS Associates, L.P. v. J. Ezra Merkin*, AAA Arbitration No. 13 148 Y 012802 10, dated September 16, 2011.

28. Attached hereto as Exhibit 27 is a copy of an excerpt from the deposition transcript of Andrew Gordon dated August 16, 2011.

29. Attached hereto as Exhibit 28 is a copy of an excerpt from the deposition transcript of Robert Castro, as designated 30(b)(6) witness and individually, dated October 10, 2012.

30. Attached hereto as Exhibit 29 is a copy of an engagement letter between BDO Seidman LLP and Gabriel Capital Corporation dated January 27, 2006, Trustee Exhibit 27, Bates Numbered BDO_T_0004899.

31. Attached hereto as Exhibit 30 is a copy of an excerpt from the deposition transcript of Joshua Nash dated October 18, 2012.

32. Attached hereto as Exhibit 31 is a copy of an excerpt from the deposition transcript of Michael Andreola in the matter *CRT Investments, Limited v. J. Ezra Merkin et al.*, Index No. 601052/09, dated May 3, 2010, Bates Numbered BDO_T_0043030.

33. Attached hereto as Exhibit 32 is a copy of an excerpt from the deposition transcript of Dr. Steve Pomerantz dated July 8, 2015.

34. Attached hereto as Exhibit 33 is a copy of an excerpt from the deposition transcript of Amy Hirsch dated June 16, 2015.

35. Attached hereto as Exhibit 34 is a copy of an excerpt from the deposition transcript of Jeffrey M. Weingarten, dated July 15, 2015.

36. Attached hereto as Exhibit 35 is a copy of the expert report of Jeffrey M. Weingarten dated March 19, 2015.

37. Attached hereto as Exhibit 36 is a copy of an excerpt from the deposition transcript of Joel Ehrenkranz dated March 20, 2014.

38. Attached hereto as Exhibit 37 is a copy of an excerpt from the deposition transcript of Patrick Erne dated June 26, 2014.

39. Attached hereto as Exhibit 38 is a copy of an excerpt from the deposition transcript of Noreen Harrington dated October 1, 2013.

40. Attached hereto as Exhibit 39 is a copy of an excerpt from the deposition transcript of Jason Orchard dated October 8, 2013.

41. Attached hereto as Exhibit 40 is a copy of an excerpt from the deposition transcript of Wilbur Kim dated November 19, 2013.

42. Attached hereto as Exhibit 41 is a copy of an excerpt from the deposition transcript of Research Company A Director of Research dated November 22, 2013.

43. Attached hereto as Exhibit 42 is a copy of a document entitled "Ascot questions" drafted by Research Company A Principal, dated May 19, 2014, Trustee Exhibit 209, Bates Numbered CON00000053.

44. Attached hereto as Exhibit 43 is a copy of a document of notes of a telephone call between Ezra Merkin, Research Company A Director of Research, and Research Company A Principal on June 27, 2003, Trustee Exhibit 208, Bates Numbered CON00000057.

45. Attached hereto as Exhibit 44 is a copy of an excerpt from the deposition transcript of Christof Reichmuth dated June 24, 2014.

46. Attached hereto as Exhibit 45 is a copy of a document entitled "Madoff Statement Analysis" dated July 1, 2003, Trustee Exhibit 222, Bates Numbered CON00000063.

47. Attached hereto as Exhibit 46 is a copy of an excerpt from the deposition transcript of Daniel Gottlieb dated October 22, 2012.

48. Attached hereto as Exhibit 47 is a copy of an excerpt from the deposition transcript of Tina Surh, as designated 30(b)(6) witness and individually, dated September 18, 2013.

49. Attached hereto as Exhibit 48 is a copy of an excerpt from the deposition transcript of Morris Smith dated March 4, 2014.

50. Attached hereto as Exhibit 49 is a copy of an email from Ezra Merkin Re: “Issues we should of asking each of our money managers” dated September 7, 2005, Bates Numbered BS00224244.

51. Attached hereto as Exhibit 50 is a copy of an excerpt from the deposition transcript of Victor Teicher in the matter *New York University v. Ariel Fund Ltd.*, No. 08603803/2008 (N.Y. Sup. Ct.), dated February 9, 2009, Trustee Exhibit 158.

52. Attached hereto as Exhibit 51 is a copy the errata sheet from the deposition transcript of Victor Teicher in the matter *New York University v. Ariel Fund Ltd.*, No. 08603803/2008 (N.Y. Sup. Ct.), dated March 30, 2009, Trustee Exhibit 159.

53. Attached hereto as Exhibit 52 is a copy of an excerpt from the deposition transcript of Victor Teicher dated October 29, 2013.

54. Attached hereto as Exhibit 53 is a copy of an excerpt from the deposition transcript of Ed Thorp dated May 22, 2012.

55. Attached hereto as Exhibit 54 is a copy of an excerpt from the deposition transcript of Jack Mayer dated October 11, 2011.

56. Attached hereto as Exhibit 55 is a copy of the verification to Defendants J. Ezra Merkin and Gabriel Capital Corporation’s Supplemental Responses to Plaintiff’s Second Set of Interrogatories and Requests for Admissions in Accordance with Decision # 3, dated August 30, 2013, Trustee Exhibit 354A.

57. Attached hereto as Exhibit 56 is a copy of an excerpt from the arbitration testimony of Ezra Merkin in the matter *Richard Born v. J. Ezra Merkin*, AAA Arbitration No. 13 148 Y 01799 10, dated July 15 and 18, 2011.

58. Attached hereto as Exhibit 57 is a copy of the Confidential Offering Memorandum of Gabriel Capital, L.P., dated March 2006, Bates Numbered GCC-SEC 0000874.

59. Attached hereto as Exhibit 58 are copies of letters to investors of Ascot Fund from Ezra Merkin dated December 22, 1992, Trustee Exhibit 365, Bates Numbered BS00306002.

60. Attached hereto as Exhibit 59 are Madoff & Company Summary of Account Allocations and a copy of a letter to investors of Ascot Partners from Ezra Merkin dated December 22, 1992, Trustee Exhibit 366, Bates Numbered BS00305716.

61. Attached hereto as Exhibit 60 is a copy of a January 1994 Newsletter from Merkin to Investors, Bates Numbered GCC-P 0470411.

62. Attached hereto as Exhibit 61 is a copy of an April 1995 Newsletter from Merkin to Investors, Bates Numbered BS00043057.

63. Attached hereto as Exhibit 62 is a copy of an April 2002 Newsletter from Ezra Merkin to Investors, Bates Numbered GCC-P 0183728.

64. Attached hereto as Exhibit 63 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin *In the Matter of Madoff Charities Investigation* by the New York Attorney General dated January 30, 2009, Bates Numbered BS00001025 at 37-38.

65. Attached hereto as Exhibit 64 is a copy of an excerpt from the arbitration transcript of J. Ezra Merkin, *Straus v. Merkin*, Arb. No. 13 148 Y 01800 10 dated June 21, 2011.

66. Attached hereto as Exhibit 65 is a copy of the Form ADV Uniform Application for Investment Adviser Registration for Bernard L. Madoff Investment Securities dated January 7, 2008, Bates Numbered PUBLIC0003834.

67. Attached hereto as Exhibit 66 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin in the matter *New York University v. Ariel Fund Ltd.*, No. 08603803/2008 (N.Y. Sup. Ct.), dated February 9, 2009.

68. Attached hereto as Exhibit 67 is a copy of the Confidential Offering Memorandum of Ascot Partners, L.P, dated March 2006, Trustee Exhibit 99, Bates Numbered HLGSA-00000088.

69. Attached hereto as Exhibit 68 is a copy of Jason Orchard's Meeting Notes dated November 14, 2005, Trustee Exhibit 144, Bates Numbered SMC-NYAG000001.

70. Attached hereto as Exhibit 69 is a copy of the Termination Agreement between GCC and Ascot Fund, dated December 19, 2002, Trustee Exhibit 334, Bates Numbered AF00000187.

71. Attached hereto as Exhibit 70 is a copy of a letter from J. Ezra Merkin to an investor in Ascot Partners dated November 11, 2002, marked Trustee Exhibit 240, Bates Numbered BS00451097.

72. Attached hereto as Exhibit 71 is a copy of an excerpt from the deposition transcript of Donald Seymour dated January 13, 2015.

73. Attached hereto as Exhibit 72 is a copy of the Register of Directors and Officers of Ascot Fund Limited, dated November 1, 2006, Trustee Exhibit 327, Bates Numbered AF00000141.

74. Attached hereto as Exhibit 73 is a copy of an excerpt from the deposition transcript of Aldo Ghisletta dated January 14, 2015.

75. Attached hereto as Exhibit 74 is a copy of the rebuttal expert report of Paul K. Meyer dated May 15, 2015.

76. Attached hereto as Exhibit 75 is a copy of an excerpt from the deposition of Paul K. Meyer dated July 10, 2015.

77. Attached hereto as Exhibit 76 is a copy of a fax from Michael Autera to Frank DiPascali dated January 4, 2007, Trustee Exhibit 285, Bates Numbered AMF00076288.

78. Attached hereto as Exhibit 77 is a copy of Ascot Partners BLMIS Account statement for January 2007, Trustee Exhibit 287, Bates Numbered MDPTPP000020630.

Dated: New York, New York
November 25, 2015

Respectfully submitted,

BAKER & HOSTETLER LLP

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